

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 13, 2013

In the Matter of JOYNER/COLEN, Minors.

No. 312826
Calhoun Circuit Court
Family Division
LC No. 2011-002604-NA

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court's order terminating her parental rights to the minor children. We affirm.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." *In re VanDalen*, 293 Mich App at 139, quoting MCL 712A.19b(5). The best-interest "determination is to be made on the basis of the evidence on the whole record and is reviewed for clear error."¹ *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008). This Court must give due regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C).

The trial court in this case terminated respondent's parental rights under the following statutory grounds:

¹ Pursuant to *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Issued May 9, 2013, Docket No. 311610), slip op at 6, a preponderance-of-the-evidence standard applies to the trial court's best-interests determination, wherein the focus is on the best interests of the child.

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(c)(i),(c)(ii), (g), (j).]

On appeal, respondent's counsel inexplicably argues that the trial court erred by terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (h). By doing so, respondent's counsel incorrectly includes MCL 712A.19b(3)(h) as one of the grounds upon which the trial court terminated respondent's rights and fails to address MCL 712A.19b(3)(c)(ii) and (j), two other grounds upon which the trial court based its termination decision.² Appellate counsel's error is magnified by the fact that MCL 712A.19b(3)(h) applies only to imprisoned parents, and respondent was not incarcerated. The consequence of these errors is that respondent challenges only two out of the four statutory grounds for termination on appeal. And, because only one statutory ground for termination must be established, *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000), respondent mother's arguments in regard to statutory grounds are moot. "An issue is moot where circumstances render it impossible for the reviewing court to grant any relief." *In re Wayne Co Election Comm*, 150 Mich App 427, 432; 388 NW2d 707 (1986). We

² Similarly inexplicable is plaintiff counsel's incorrect citation to MCL 712A.19b(3)(e) as a fifth statutory ground upon which the trial court relied in terminating respondent's parental rights, which is not borne out by a review of the record and termination order.

generally will not decide moot issues. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Nevertheless, we have reviewed the merits of the trial court's findings, and we conclude that the trial court did not clearly err by finding statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j).³ See MCR 3.977(K); see also *In re Trejo*, 462 Mich at 356-357. Given respondent's failure to take necessary measures to secure stable housing and employment and her failure to substantially comply with or benefit from the many services DHS provided to her, which the trial court characterized as "every kind of help the Department has available" in an effort to help get her into a better position where she could be reunited with her children, respondent is not entitled to relief on her claim that statutory grounds were not established by clear and convincing evidence. While the main theme of respondent's arguments on appeal centers around her need for more time to address the issues that led to removal of the children, the trial court did not clearly err when it found no reasonable excuse for respondent's substantial noncompliance with the many services offered to her and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages.

Respondent also argues that because the trial court erred by finding that statutory grounds for termination existed in this case, the trial court's determination that termination was in the minor children's best interests was premature. Respondent is correct that a trial court must find both a statutory ground for termination and also that termination is in the children's best interests before terminating a parent's rights. MCL 712A.19b(5); see also *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010). However, as discussed *supra*, the trial court did not err by finding statutory grounds for termination. Thus, the trial court was required to address and decide whether termination was in the children's best interests. Respondent's argument, therefore, lacks merit. Moreover, there was testimony that termination was in the children's best interests because they needed permanency that respondent mother could not provide due to the inconsistencies in her ability to provide a stable and nurturing environment for the children. A child's need for permanence may be considered in determining best interests. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Accordingly, the trial court did not clearly err by finding that termination of respondent mother's parental rights was in her children's best interests. See MCR 3.977(K); see also *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell

³ Although the trial court's termination order includes MCL 712A.19b(3)(c)(ii) as a ground for termination, the trial court fails to identify what other conditions existed that caused the child to come within the court's jurisdiction but that respondent did not rectify.